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## THREE YEARS LATER, SANDY SURVIVORS REMAIN HOMELESS

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### I. INTRODUCTION

Americans have long felt the devastating financial burden of the catastrophic effects of flooding. With annual economic losses averaging a whopping fifty billion dollars per year, flooding has notoriously earned its place as the most costly, and unfortunately the most common, natural disaster to disrupt the United States. Flooding is the greatest financial danger among the possible hazards brought on by hurricanes, which often bring flooding hundreds of miles inland, placing communities that normally would not be affected by the strongest hurricane winds in great danger. A mere few inches of water due to flooding could mean damages costing upwards of five figures.

On October 28, 2012, Superstorm Sandy (“Sandy”) pushed its way ashore in New Jersey and New York with a devastating storm surge, causing significant damage estimated to be the second-costliest cyclone to hit the United States since 1900.<sup>1</sup> The Superstorm and its relentless storm surge resulted in damage or destruction to a mini-

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<sup>1</sup> Eric S. Blake et al., *Tropical Cyclone Report Hurricane Sandy*, 1 NAT’L HURRICANE CTR. (Feb. 12, 2013), [http://www.nhc.noaa.gov/data/tcr/AL182012\\_Sandy.pdf](http://www.nhc.noaa.gov/data/tcr/AL182012_Sandy.pdf).

num of 650,000 houses.<sup>2</sup> By November 7, 2012, the number of individuals that had registered for assistance exceeded 352,000 with over \$403 million in assistance from the Federal Emergency Management Agency (“FEMA”) approved at that time.<sup>3</sup> According to New York recovery data provided by the Federal Emergency Management Agency, as of October 6, 2014, over “\$13.6 billion in total federal assistance [had] been provided for Individual Assistance grants, SBA low-interest disaster loans, National Flood Insurance Program payments and Public Assistance grants.”<sup>4</sup> Specifically, upon referral by FEMA, more than 211,970 households received a total of over \$1 billion in individual assistance through the Individual’s and Households Program ceasing on April 30, 2014.<sup>5</sup> Furthermore, over \$1.5 billion in disaster loans from the U.S. Small Business Administration had been approved at that time for the assistance of 23,216 businesses and individuals.<sup>6</sup> Finally, 57,244 National Flood Insurance Program policyholders had received flood insurance payments totaling over \$3.9 billion in New York as of October 6, 2014.<sup>7</sup> Thereafter, according to FEMA’s fact sheet published March 18, 2016, flood insurance lawsuits have paid out in excess of \$147,000,000, and the FEMA Sandy Claims Review Process has issued payments in the amount of \$31,106,000.<sup>8</sup>

As the third year anniversary of Superstorm Sandy passes, and billions of dollars in flood insurance and disaster-related assistance have been paid to homeowners, thousands of homeowners remain displaced or are living in a home that remains in disrepair. As of October 29, 2015, a poll indicated that 41% of homeowners in New Jersey were still in need of money to fix their storm-damaged

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Two years after Hurricane Sandy: New York recovery by the numbers*, FEMA (Oct. 23, 2014), <http://www.fema.gov/disaster/4085/updates/two-years-after-hurricane-sandy-new-york-recovery-numbers> [hereinafter “FEMA, *Two years after Hurricane Sandy*”].

<sup>5</sup> *Id.* “This program disbursed over \$1 billion to survivors. Of that total, nearly \$865 million was for housing assistance. Maximum grants of \$31,900 were given to 5,263 applicants. Nearly 5,600 survivors received more than \$8.9 million in disaster unemployment assistance.” *Id.*

<sup>6</sup> *Id.* “Of that, nearly \$1.3 billion was approved for homeowners and renters and about \$267.5 million was approved for businesses.” *Id.*

<sup>7</sup> FEMA, *Two years after Hurricane Sandy*, *supra* note 4.

<sup>8</sup> *NFIP Transformation Task Force Update*, FEMA (Mar. 18, 2016), [http://www.fema.gov/media-library-data/1458332015100-0c64cf2ea8839bee8b80628c1946f4a6/FS\\_NFIP\\_Transformation\\_Task\\_Force031816\\_508\\_compliant.pdf](http://www.fema.gov/media-library-data/1458332015100-0c64cf2ea8839bee8b80628c1946f4a6/FS_NFIP_Transformation_Task_Force031816_508_compliant.pdf).

homes.<sup>9</sup> In fact, most Sandy-affected homeowners and Sandy advocates would agree that we are still at the initial stages of recovery.

This article will reflect and analyze the recovery in the three years since the storm, addressing: (I) Robert T. Stafford Disaster Relief and Emergency Assistance Act and necessary amendments to the Act; (II) a critical examination of FEMA's IHP disaster grant recoupment process; (III) FEMA fraud and the Sandy Claims Review Process; and (IV) the importance of the collaboration of the legal and non-legal non-profit agencies immediately post-disaster.

## II. ROBERT T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the "Stafford Act")<sup>10</sup> is a law that intended to "provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which results from such disasters."<sup>11</sup> Under the Stafford Act's framework, Congress instituted a goal to achieve greater coordination and responsiveness of disaster preparedness and relief programs.<sup>12</sup> It also sought to guard against fraud and ineligible uses of taxpayers' funds.<sup>13</sup>

However, the Stafford Act presupposes that homeowners are correctly paid under their flood insurance policy, prior to receiving all eligible disaster-related relief immediately following a disaster, and does not account for the tragedy that occurred after Sandy. Following Sandy, homeowners were incorrectly paid flood insurance proceeds due to systemic fraud and undervaluation, which resulted in incorrect disaster awards from Community Development Block Grants (CDBG), as well as Small Business Administration (SBA) loans.<sup>14</sup> It has been over three years since Sandy devastated the East-

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<sup>9</sup> Erin O'Neill, *41% of Sandy victims still need money to fix homes, poll says*, NEW JERSEY (Oct. 29, 2015), [http://www.nj.com/news/index.ssf/2015/10/sandy\\_monmouth\\_poll\\_1.html](http://www.nj.com/news/index.ssf/2015/10/sandy_monmouth_poll_1.html).

<sup>10</sup> Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5208 (2013) [hereinafter referred to as "The Stafford Act"].

<sup>11</sup> The Stafford Act § 5121.

<sup>12</sup> Clarification of Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees, 76 Fed. Reg. 71,061 (Nov. 21, 2011) [hereinafter "2011 Stafford Act Clarification"].

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

ern-Seaboard, and homeowners are still battling FEMA for flood insurance proceeds that are rightfully theirs. If in fact homeowners receive additional flood insurance proceeds, those funds will have a direct result upon all disaster related assistance, which has the potential of placing thousands of Sandy survivors in repayment of state and federal grant dollars.

It is within the Stafford Act that FEMA has the authority to release grants in a time of a Major Disaster.<sup>15</sup> Prior to the creation of the Department of Homeland Security, FEMA was an independent agency that reported to the President.<sup>16</sup> However, since 2002, FEMA has been part of the US Department of Homeland Security.<sup>17</sup> Under this new arrangement, FEMA continued to coordinate federal disaster response, but it has lost its independent decision-making capabilities.<sup>18</sup> FEMA must report to the Secretary of the Department of Homeland Security and make decisions within the larger framework of the Department.<sup>19</sup> Other agencies, in addition to FEMA and the Department of Homeland Security, provide critical disaster recovery assistance that falls outside the scope of the Stafford Act. This includes the Department of Housing and Urban Development, which provides Community Development Block Grants (CDBG) to aid rebuilding, and the Small Business Administration (SBA), which provides economic assistance to businesses following a disaster.<sup>20</sup>

The President makes Major Disaster declarations only when “response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary”.<sup>21</sup> The Stafford Act defines a Major Disaster as:

[A]ny natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the

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<sup>15</sup> The Stafford Act, *supra* note 11.

<sup>16</sup> *About the Agency*, FEMA, <https://www.fema.gov/about-agency> (last updated Mar. 30, 2016).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> FEMA, *Two years after Hurricane Sandy*, *supra* note 4.

<sup>21</sup> The Stafford Act, *supra* note 11.

President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.<sup>22</sup>

The Stafford Act also includes limitations on the issuance of grant money under Section 408. Section 312 outlines the general prohibition on “duplication of benefits.” It states that no benefits should be given to a “person, business concern, or other entity” who has also been given financial assistance under another program or from insurance.<sup>23</sup> Section 312 also provides that a person should not receive financial assistance from another source that is for the same purpose as funds received through the Community Development Block Grant Disaster Recovery Program (the “CDBG-DR”).<sup>24</sup> This prohibition ensures that:

[T]he prohibition on duplication of benefits ensures that Federal assistance serves only “to supplement insurance and other forms of disaster assistance.” To accomplish these goals, the Stafford Act implies a hierarchy of funding . . . ,<sup>25</sup> and prohibits Federal agencies from providing recovery assistance to the extent another source has covered the same portion of that recovery need.<sup>26</sup>

A duplication of benefits is found when:

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<sup>22</sup> The Stafford Act, *supra* note 11.

<sup>23</sup> 44 C.F.R. § 206.2.

<sup>24</sup> This section provides in pertinent part:

The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.

*Id.* § 312.

<sup>25</sup> 2011 Stafford Act Clarification, *supra* note 12.

<sup>26</sup> 2011 Stafford Act Clarification, *supra* note 12.

[A] beneficiary receives assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose.<sup>27</sup> “The amount of the duplication is the amount of assistance provided in excess of need.”<sup>28</sup> The “Stafford Act requires a fact-specific inquiry into assistance received by each person, household, or entity.”<sup>29</sup> “A grantee may not make a blanket determination that a duplication of benefits does not exist for all beneficiaries or recipients under a disaster recovery program.”<sup>30</sup> “As a result, all disaster recovery funds must be governed by policies and procedures to prevent duplication of benefits.”<sup>31</sup> “In disaster recovery, it is common for multiple sources of funds to be used to address a single need.” Any recipient receiving a duplicate benefit may be liable to the Federal government.<sup>32</sup>

In order to avoid duplication of benefits, each agency is required to follow a delivery sequence list provided by FEMA in order to ascertain “the order in which a program should provide assistance and what other resources it must consider before it does so.”<sup>33</sup> The hierarchy is as follows: 1) Volunteer agencies’ emergency assistance programs (ARC, Salvation Army, etc.); 2) FEMA Home Repair and Replacement; 3) Flood and hazard insurance; 4) SBA and Department of Agriculture disaster loans; 5) FEMA IHP assistance; and 6) other federal, state and local government agencies (HUD and CDGB-DR grants).<sup>34</sup> Agencies that are higher in the order are expected to provide assistance prior to assistance from agencies lower on the sequence list.<sup>35</sup> The Stafford Act determines an accurate duplication of benefits to be found by:

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<sup>27</sup> *CDBG-DR Eligibility Requirements*, HUD EXCHANGE, <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-eligibility-requirements/> (last visited Mar. 30, 2016).

<sup>28</sup> 2011 Stafford Act Clarification, *supra* note 12.

<sup>29</sup> 2011 Stafford Act Clarification, *supra* note 12.

<sup>30</sup> 2011 Stafford Act Clarification, *supra* note 12.

<sup>31</sup> 2011 Stafford Act Clarification, *supra* note 12.

<sup>32</sup> The Stafford Act § 5155(c); *see* 2011 Stafford Act Clarification, *supra* note 12.

<sup>33</sup> *Small Business Administration Standard Operating Procedure*, SOP 50-30-7 at 105, SMALL BUS. ADMIN. (May 13, 2011), <https://www.sba.gov/sites/default/files/SOP%2050%2030%207.pdf>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

[F]irst [determining] the applicant's total post-disaster need in the absence of any duplicative benefits or program caps.<sup>36</sup> Following the identification of total need, duplicative assistance can later be subtracted and program caps applied to arrive at a final award.<sup>37</sup> "Assistance includes all benefits available to the person, including cash and other resources such as insurance proceeds, grants, and SBA loans."<sup>38</sup> Once the grantee has determined the potential award and the total assistance received or to be received, it can exclude for duplication of benefit purposes, assistance that was: (1) Provided for a different purpose; (2) Used for a different, eligible purpose; (3) Not available to the applicant; (4) A private loan not guaranteed by SBA; or (5) any other asset or line of credit available to the applicant.<sup>39</sup>

The SBA loan is the only form of assistance on this list that is not a grant. An SBA loan is required to be repaid, whereas the grants received are not. Loans that need to be repaid with interest should not preclude a homeowner from receiving other forms of assistance. Therefore, the Stafford Act should be amended to remove SBA loans from the duplication of benefits analysis.

Further, SBA loans should not be considered duplicative for purposes of receiving CDBG disaster assistance. SBA loans offered to homeowners are currently considered to be duplicative assistance when calculating funds for the CDBG assistance programs, which consist of the New York Rising program ("NYR")<sup>40</sup>, Build-it-BACK ("BIB")<sup>41</sup> and New Jersey's Rehabilitation, Reconstruction, Elevation and Mitigation Program ("RREM").<sup>42</sup> As a result, many homeowners are being underpaid for the damage done to their homes as a result of

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<sup>36</sup> 2011 Stafford Act Clarification, *supra* note 12.

<sup>37</sup> 2011 Stafford Act Clarification, *supra* note 12.

<sup>38</sup> 2011 Stafford Act Clarification, *supra* note 12.

<sup>39</sup> 2011 Stafford Act Clarification, *supra* note 12.

<sup>40</sup> GOVERNOR'S OFFICE OF STORM RECOVERY OF THE HOUSING TRUST FUND CORPORATION, NY RISING HOUSING RECOVERY HOMEOWNER POLICY MANUAL 51-52 (2014).

<sup>41</sup> *Rebuild Program*, NEW YORK CITY BUILD IT BACK, <http://www.nyc.gov/html/recovery/html/homeowners/rebuild.shtml> (last visited on Mar. 30, 2016).

<sup>42</sup> *Rehabilitation, Reconstruction, Elevation and Mitigation Program*, REnew JERSEY STRONGER, <http://www.renewjerseystronger.org/homeowners/rrem/> (last visited on Mar. 30, 2016).



Superstorm Sandy in October 2012.

The Stafford Act was created in a time before storms of this magnitude were considered to be as regular a possibility as they are today. Even more, the system, as it currently stands, is punishing homeowners who were proactive in rebuilding their homes. Many of these people accepted SBA loans, at the urging of FEMA and HUD, unaware that this would limit the amount they would be able to receive through NYR. Now, years later, these homeowners find themselves unable to receive the full amount of assistance from CDBG assistance programs that is required to complete the rebuild of their homes.

Congress has taken notice of the plight faced by homeowners who have been greatly disadvantaged by accepting SBA loans. On June 1, 2015, Thomas MacArthur, a Congressman from New Jersey's third Congressional District, introduced the Disaster Survivor Benefit Clarification Act of 2015 in hopes of rectifying this issue.<sup>43</sup> As introduced, the bill would amend the Stafford Act to provide that "an SBA disaster loan made on or after January 1, 2012, shall not be considered financial assistance for purposes of the prohibition on receiving duplicative disaster assistance" if certain conditions are met.<sup>44</sup>

While placing conditions on an SBA loan in order for it to not be considered duplicative is not the optimal solution, this proposed bill demonstrates that members of Congress have recognized that there is a problem with the way the system currently works. As has been mentioned herein, SBA loans are the only form of relief listed by FEMA which is required to be paid back with interest. This is inherently unfair to homeowners, as in many circumstances (as displayed in the aftermath of Superstorm Sandy) this is the first relief that is available to them. FEMA's priority should be to provide the most effective and efficient form of relief to those impacted by natural disasters like Superstorm Sandy.

The current handling of SBA loans is neither effective nor efficient. Senator Charles Schumer, in an interview with *Newsday*, echoed this sentiment, stating that "[i]t's simply not fair that residents who did the responsible thing, followed directions, and quickly took out loans to rebuild now have access to fewer grants . . . ."<sup>45</sup> New

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<sup>43</sup> H.R. 2594, 114th Cong. 1st. Sess. (2015).

<sup>44</sup> *Id.* These conditions include whether the loan has been repaid in full or whether the borrower is making the required payments on time. *Id.*

<sup>45</sup> Bart Jones, *SBA Loans Keep Sandy Recipients from NY Rising Aid*, *NEWSDAY* (Oct. 25,

York Governor Andrew Cuomo has taken an even stronger stance – that duplication of benefits should be waived in their entirety for victims of Superstorm Sandy. Cuomo stated that “[w]aiving this requirement is not just smart policy – it’s the right thing to do . . . .”<sup>46</sup> The process of homeowners potentially having to return duplicative funds to NYR “would create an administrative burden to numerous government agencies, and pose a significant financial burden and additional delay to homeowners who have suffered for nearly three years while recovering from this devastating storm.”<sup>47</sup>

The Governor’s office stated that the cost of administering this process, estimated at \$1.5 million, is potentially less than the possible amount of recoupment to New York State.<sup>48</sup> In fact, the Stafford Act provides that “[t]he agency which provided the duplicative assistance . . .” can collect the duplicative funds “when the head of such agency considers it to be in the best interest of the Federal Government.”<sup>49</sup> This gives the head of an agency the discretion to not collect when it would not be in the best interest of the Federal Government to do so. In the present situation, it is not in the best interest of the Federal Government to recoup duplicative benefits from homeowners, as administration of the process to collect duplicative benefits may cost more than will be recouped from homeowners.

Most recently, in an effort to assist struggling Sandy survivors, U.S. Senators Bob Menendez and Cory Booker authored the RISE After Disaster Act of 2015<sup>50</sup> that would extend, expand and improve access to federal disaster loans through the U.S. Small Business Administration. On November 25, 2015, the legislation became Public Law: 114-88 and immediately thereafter on December 2, 2015, the SBA announced it has reopened the filing period for survivors in all states affected by Superstorm Sandy to apply for low-interest disaster loans. The new filing deadline for physical damage and economic injury losses is December 1, 2016. The Recovery Im-

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2013), <http://www.newsday.com/long-island/sba-loans-keep-sandy-recipients-from-ny-rising-aid-1.6322457>.

<sup>46</sup> *Governor Cuomo Requests Federal Waiver for Superstorm Sandy Homeowners Set to Receive FEMA Settlements*, OFFICE OF THE GOVERNOR OF NEW YORK (Aug. 13, 2015), <https://www.governor.ny.gov/news/governor-cuomo-requests-federal-waiver-superstorm-sandy-homeowners-set-receive-fema-settlements>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> The Stafford Act § 5155(c).

<sup>50</sup> H.R. Con. Res. 208, 114th Cong. (2015) (enacted).

provements for Small Entities (RISE) After Disaster Act of 2015, which became law on November 25, 2015, gives the SBA Administrator the authority to make disaster loans for Superstorm Sandy for a period of one year.<sup>51</sup>

While the reopening of the SBA loans is a crucial step forward for some homeowners in their Sandy recovery, there is a large number of homeowners who are applicants in a CDBG disaster assistance program, and must conduct a complete and thorough duplication of benefits analysis prior to applying for the newly opened SBA loan. Unless there is a waiver of SBA from the duplication of benefits analysis for the CDBG program applicants, most homeowners will continue to live in disrepair, and those homeowners who do apply and qualify for a loan face a recapture of disaster grant funds at the state and federal levels.

### III. FEMA INDIVIDUAL AND HOUSEHOLDS PROGRAM (IHP) AND RECOUPMENT PROCESS

Although it's been over three years since Superstorm Sandy made landfall on Long Island, homeowners and families are still feeling its affects. FEMA is a government agency that is tasked with minimizing the hardship felt by people after a disaster and has many tools at its disposal to help alleviate suffering. One of these tools is the ability to provide disaster assistance in the form of grant money that is directly paid to individuals and households under the FEMA Individuals and Households Program (IHP). FEMA is given the authority to disperse these funds under Section 408 of the Stafford Act, entitled "Federal Assistance to Individuals and Households."<sup>52</sup> Section 408 of the Stafford Act generally provides for "financial assistance, and if necessary, direct services, to individuals and households in the State who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which individuals and households are unable to meet such expenses or needs through other means."<sup>53</sup> This assistance takes the form of funds for temporary housing, repair of a primary residence, replacement of a residence

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<sup>51</sup> *Id.* § 1101.

<sup>52</sup> The Stafford Act, *supra* note 11.

<sup>53</sup> The Stafford Act, *supra* note 11.

and permanent or semi-permanent housing and financial assistance for other needs such as medical care, and personal property.<sup>54</sup>

After Superstorm Sandy, FEMA provided more than one billion dollars in grant money via the Individuals and Households program.<sup>55</sup> While this grant program has helped homeowners, thousands of individuals are now, *three-years post disaster*, being asked to give this money back, on the basis that FEMA has conducted an internal audit that flags some grant money as wrongfully dispersed.<sup>56</sup> As of August 4, 2015, FEMA is attempting to collect \$14 million dollars from Sandy applicants, who it has been determined by FEMA, were improperly paid.<sup>57</sup> In many cases, this money has already been spent and individuals may find themselves having to pay sums as large as \$31,900 dollars back to the agency tasked to help them in a time of need.<sup>58</sup>

The FEMA recoupment process occurs in three stages. The first stage is a Notice of Debt letter sent to an applicant. During this stage an applicant can 1) Pay the full amount of the debt; 2) Fill out the proper forms to enter into a payment plan; 3) Request the debt be reduced based on a financial hardship; or 4) File an appeal within 60 days of receiving the notice of debt letter. If one of these actions is not taken then the debt proceeds to the second stage.

Once a recoupment reaches the second stage, there is a letter of intent mailed to the applicant. This letter is sent by FEMA to alert the applicant that if they do not resolve the debt, FEMA will refer the debt to the U.S Treasury for collection.<sup>59</sup> The third and final stage is when the recoupment debt is forwarded to Treasury for collection.

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<sup>54</sup> The Stafford Act, *supra* note 11.

<sup>55</sup> Emily C. Dooley, *Schumer asks FEMA to stop using Treasury Department for debt collection*, NEWSDAY (Oct. 21, 2015), <http://www.newsday.com/long-island/schumer-asks-fema-to-stop-using-treasury-department-for-debt-collection-1.10992893> [hereinafter Dooley, *Schumer asks FEMA*].

<sup>56</sup> Miles Parks, *For Some Superstorm Sandy Victims, The Government Wants Its Money Back*, NPR (April 13, 2015) <http://www.npr.org/2015/04/13/390442517/for-some-superstorm-sandy-victims-the-government-wants-its-money-back>.

<sup>57</sup> Dooley, *Schumer asks FEMA*, *supra* note 55.

<sup>58</sup> Emily C. Dooley, *FEMA demanding Llers give back Sandy payments*, NEWSDAY (June 13, 2015) <http://www.newsday.com/long-island/fema-demanding-liers-give-back-sandy-payments-1.10538170>.

<sup>59</sup> Dooley, *Schumer asks FEMA*, *supra* note 55.

The Touro Law Center Disaster Relief Clinic (“Clinic”), has been working with Sandy victims who have received a Notice of Debt Letter (NOD) from FEMA since October of 2014. The Clinic has represented individuals through the appeal process, in oral hearings and has advocated for policy changes within the program. An oral hearing must be requested in an appeal and will be granted if FEMA finds that there is an issue of fact that can only be resolved through the oral testimony of the applicant. After over a year of working through the appeals process, it has become quite evident that the IHP appeals process needs a complete overhaul and reformation.

As of January 11, 2016, the Clinic has filed appeals on behalf of seventeen homeowners. In every case the Clinic has represented, the applicant had filed their own appeal, which was denied prior to seeking the assistance of the Clinic. The Clinic has successfully terminated nine debts completely and received reductions (up to 90%) in five cases, totaling \$97,597.81 plus all associated penalties and fees on behalf of homeowners. The Clinic conducted its first oral hearing on July 27, 2014 and is still awaiting the results.

Representing clients through the appeal process has revealed numerous barriers to having an appeal properly examined. These barriers, which will be discussed in detail below, include: (1) Vague Notice of Debt letters; (2) An aggressive debt collection policy once the debt reaches the US treasury; (3) An inability to speak to a live individual who has the power to terminate a debt; and (4) No standardized decisions on appeal.

#### **A. Vague Notice of Debt letters**

A Notice of Debt letter asking for the return of FEMA provided grant money serves as the first notice that FEMA is seeking to recoup IHP funds, and provides the individual an opportunity to appeal the decision. Each Notice of Debt letter begins:

[F]ollowing every federally declared disaster, as authorized by law FEMA conducts audits of disaster assistance payments to individuals ensuring taxpayer dollars were provided appropriately and in an amount meeting the eligible needs of the applicant. FEMA provided you funds as a result of your application for disaster assistance. These funds were provided based upon disaster-related needs you indicated in your ap-

plication to FEMA. However, during our review of your case, you were found ineligible for some or all of the funds FEMA provided you under on the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288 as amended), 42 U.S.C. 5121-5207.

Thereafter, the letter provides the applicant with only two pieces of information – the general category of the recoupment and the amount of money FEMA alleges to be in recoupment. Common categories for a recoupment include: duplication of benefits with insurance, benefits received for a non-primary residence, and multiple members of the same household receiving benefits.

Although this approach of providing limited generic information is efficient for FEMA, it is burdensome to applicants who are not provided the necessary information to file an effective appeal. By way of example, multiple recoupments the Clinic has handled were issued because of an alleged duplication of benefits. A duplication of benefits occurs when an applicant receives grant money from FEMA and money from an alternate source for the identical purpose. However, there is no duplication when the alternate source of funds cover items that FEMA's grant did not cover. This key information is not provided in the Notice of Debt letter for duplication of benefits, and is typically unknown to homeowners.

The Clinic has been able to successfully terminate debts due to an alleged duplication of benefits by demonstrating that the alternate source of funds the applicant received was not allocated for the same purpose of FEMA's IHP grant. In one instance the alternate funds went directly to the applicant's mortgage, and in another, the alternate funds covered items that the FEMA IHP grant program did not.

#### **B. An Aggressive Debt Collection Policy Once the Debt Reaches The US Treasury**

The third stage of FEMA IHP recoupments is the referral of the outstanding debt to the Treasury for collection. The methods of collection include: 1) garnishing wages or social security; 2) referring the debt to a private debt collection agency; and 3) deducting from state or federal payments that may be due to the individual.

As of August 4, 2015, 533 applicant debts have been sent to Treasury for collection.<sup>60</sup> Once a letter is sent notifying an applicant that their debt has been sent to treasury they have 30 days to pay the debt in full or will be charged additional fees and interest. The fees for a debt less than 2 years old is 28% while the fee for a debt over 2 years is 30%.<sup>61</sup> Once a debt has reached treasury it is very difficult for an applicant to successfully appeal. An applicant must fill out a Department of Treasury “Cross servicing debtor dispute form.”<sup>62</sup> The form is one page and asks for an applicant’s 1) Name 2) Address 3) Social Security Number 4) FedDebt ID Number, which can be found on the applicant’s treasury debt notice, and 5) a comments box which leaves room for an applicant to explain why the debt was made in error.

The Clinic has handled seven cases that have been referred to treasury. Of these seven cases, the Clinic successfully terminated the debts in three cases, and reduced the debt of two others.

### **C. An Inability to Speak To a Live Individual Who Has the Power to Terminate A Debt**

Once in receipt of a Notice of Debt letter, an individual’s method of communication with FEMA is a toll free helpline, which provides individual’s access to FEMA helpline and finance representatives. The FEMA helpline representatives can provide information about why a Notice of Debt letter was issued, but they do not have the authority to issue decisions on an individual’s appeal and do not review appeals. FEMA finance representatives can inform the caller about how they can apply for a payment plan or to apply for debt reduction based on financial hardship. Unfortunately, it has been the Clinic’s experience that the information provided by the helpline is not always correct.

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<sup>60</sup> Emily C. Dooley, *More superstorm Sandy fallout: The disaster-grant money New Yorkers owe back to feds*, *NEWSDAY* (Oct. 11, 2015), <http://www.newsday.com/long-island/suffolk/more-superstorm-sandy-fallout-the-disaster-grant-money-new-yorkers-owe-back-to-feds-1.10944324>.

<sup>61</sup> *Id.*

<sup>62</sup> See *Cross Servicing Debtor Dispute Form*, U.S. DEP’T OF THE TREASURY: BUREAU OF THE FISCAL SERVICE, [https://www.fiscal.treasury.gov/fs-services/gov/debtColl/pdf/forms/debtor\\_dispute\\_form.pdf](https://www.fiscal.treasury.gov/fs-services/gov/debtColl/pdf/forms/debtor_dispute_form.pdf) (last visited Mar. 30, 2016).

The FEMA employees who review and make the ultimate decision on an appeal are called Appeals Officers. There is no direct avenue an applicant can take to speak or communicate with an Appeals Officer. Without the ability to speak with an appeals officer the type of information an applicant can receive from the helpline is limited to general information about the appeals process and the status of the appeal itself.

#### **D. No Standardized Decisions on Appeal**

After working on a number of appeals, it has been the Clinic's experience that two different Appeals Officers can reach different conclusions on the same file. In most cases our client's appeals' had already been denied by an Appeals Officer. In all but three of seventeen cases the Clinic has found errors in the original appeals officer's decision and was able to either 1) terminate the debt 2) have the debt reduced or 3) refer the file for an oral hearing.

The FEMA Individuals and Households grant program is a necessary and import piece of relief after a major disaster. These grants provide quick funds to deal with the emergencies that occur directly after a disaster hits. However, there are systemic issues within the FEMA recoupment process. Applicants to the grant program must receive better notice that describes the exact nature of their debt and the information that they can provide FEMA to prevail on appeal. FEMA must create an avenue for legal service providers and applicants to be able to communicate with Appeals Officers, and these officers must use more diligence in their review of applicant appeals. Because applicants are disaster victims who requested these grants in a time of great need, appeals should be looked at in a light favorable to the applicant. In cases where the recoupments are due to a duplication of benefits FEMA must be careful to see if the alternate funds covered exactly what the FEMA grant covered, if they do not, the debt must be terminated. Finally there needs to be greater care taken before referring a file to Treasury and to make it easier to get a file referred back to FEMA once it is refereed to Treasury. The exorbitant fees levied by Treasury must be reduced or completely removed. It is the hope of the Clinic that FEMA will recognize these issues and make corrections so that future victims are not faced with these hardships.



#### IV. FEMA FRAUD THE SANDY CLAIMS REVIEW PROCESS

On October 29, 2012, Superstorm Sandy caused severe damage to many areas on the Eastern Seaboard. It did more than destroy property and disrupt businesses, it also affected the lives of millions of East Coast citizens by creating a complicated mess of legal issues for home and business owners.<sup>63</sup> While it was always believed by homeowners and policyholders' advocates that there was systemic fraud evident in the widespread under valuations of Superstorm Sandy damage, and underpayments by FEMA and the WYO flood insurance companies, in 2014 Sandy victims faced what has been dubbed "*The Storm after the Storm*".<sup>64</sup> This second disaster uncovered hard evidence of wide-scale fraud, including engineering reports which were altered to deny coverage alleging damage was "pre-existing" or caused by earth movement, when in fact the original reports drafted found a causal connection between the storm and the damaged properties.

Making matters worse, appeals to the federal agency in charge of all of this, FEMA, went nowhere.<sup>65</sup> Policyholders dissatisfied with FEMA's National Flood Insurance Program (NFIP) payments they received after Superstorm Sandy had the option of filing an administrative appeal with FEMA or filing a lawsuit in U.S. District Court. Some did both.<sup>66</sup> By early 2014, approximately 2,000 policyholders filed litigation against NFIP insurers over their Sandy flood insurance claims in Federal District courts of New York and New Jersey.<sup>67</sup> As of February 21, 2014, more than 800 actions had been filed in the United States District Court for the Eastern District of New York against various insurers.<sup>68</sup> The basis of those lawsuits filed was that insurance companies denied or overly limited coverage on flood insurance claims that had been filed by Sandy affected policyholders. This litigation revealed highly questioned practices within the indus-

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<sup>63</sup> Sharyn Alfonsi, *The Storm After the Storm*, 60 MINUTES, CBS (Mar. 1, 2015), <https://s3.amazonaws.com/static.mostynlaw.com/wp-content/uploads/sites/3/2015/07/1780971640be4c0f80a23f00c00eb7d3-3.pdf>.

<sup>64</sup> *Id.*

<sup>65</sup> Alfonsi, *supra* note 63.

<sup>66</sup> *NFIP Transformation Task Force Update Fact Sheet*, FEMA (Sept. 30, 2015), [http://www.egovlink.com/public\\_documents300/newprovidence/unpublished\\_documents/Council%20Meeting%20Packet/2015/10-12/FEMA%2010022015.pdf](http://www.egovlink.com/public_documents300/newprovidence/unpublished_documents/Council%20Meeting%20Packet/2015/10-12/FEMA%2010022015.pdf).

<sup>67</sup> *Id.*

<sup>68</sup> EDNY Case Management Order No. 1, February 21, 2016, <https://img.nyed.uscourts.gov/files/general-ordes/14mc41cmo01.pdf>.

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Case Management Order (CMO) No. 1, filed on the EDNY Sandy Docket 14-MC-41, set forth various procedures intended to expedite the high volume of Superstorm Sandy cases, including automatic disclosures to be made by both plaintiffs and defendants within 60 days from the date of said Order. Specifically included within the discovery that was to be provided by defendants were:

[A]ll non-privileged documents contained in the claim file. . . any documentation relating to an assessment of the claimed loss, including all loss reports and damage assessments, adjuster's reports, engineering reports, contractor's reports, photographs taken of the damage or claimed losses, and any other evaluations of the claim. . . all claim log notes<sup>69</sup>

Just nine months following the issuance of CMO No. 1, the November 7, 2014 opinion in *Raimey v. Wright Nat'l Flood Ins. Co.*<sup>70</sup>, which addressed the disclosure of draft engineering reports on insured properties affected by Superstorm Sandy, and imposing evidentiary sanctions on defendant *Wright* and monetary sanctions on its counsel for failing to obey discovery orders and causing undue delay to these proceedings.

Following an evidentiary hearing that took place on October 16, 2014 to resolve the allegations about undisclosed draft reports and possible manipulations of the conclusion by defendant,<sup>71</sup> US Magistrate Judge Gary R. Brown issued a Memorandum and Order exposing evidence of fraud on the part of by a professional engineering firm, U.S. Forensic, retained by Wright National Flood Insurance to investigate damage to the Raimey home following Superstorm Sandy. Magistrate Brown specifically stated:

[S]pecifically, the evidence adduced in this matter demonstrates that U.S. Forensic, an engineering firm retained by defendant Wright National Flood Insurance Company ("Wright") to examine a storm-battered house in Long Beach, New York, unfairly

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<sup>69</sup> *Id.* at page 8-9, Sections B(2)(a),(b), and (d).

<sup>70</sup> In re Hurricane Sandy Cases, 303 F.R.D. 17, 19 (E.D.N.Y. 2014) *reconsideration denied*, No. 14 MC 41, 2014 WL 7011069 (E.D.N.Y. Dec. 11, 2014) and *aff'd sub nom.* *Raimey v. Wright Nat. Flood Ins. Co.*, 76 F. Supp. 3d 452 (E.D.N.Y. 2014).

<sup>71</sup> *Raimey*, 76 F. Supp. 3d at 461.

thwarted reasoned consideration of plaintiffs' claim through the issuance of a baseless report. The engineer sent by U.S. Forensic opined in a written report that the home at issue had been damaged beyond repair by Hurricane Sandy. A second engineer, who did little more than review the photographs taken by the inspecting engineer, secretly rewrote the report, reversing its conclusion to indicate that the house had not been damaged by the storm, and attributing – without sufficient evidence – defects in the home to long-term deterioration. This process, euphemistically dubbed a “peer review” by U.S. Forensic, was concealed by design from the homeowners, remained uncovered during the Court-assisted discovery process and came to light through near happenstance. In a misguided attempt to defend these flawed practices, defendant has elicited evidence that this “peer review” process may have affected hundreds of Hurricane Sandy flood insurance claims – and possibly more.<sup>72</sup>

Further, Magistrate Brown found, *inter alia*, the following:

(1) defendant and its counsel violated their obligations to comply with this Court's discovery orders by failing to produce the initial engineering report; (2) the process, in this particular case, that led to the alterations of Hernemar's observations in the initial report and the reversal of the report's conclusions was “flawed,” “unprincipled,” “reprehensible,” and “highly improper”; (3) the failure to disclose the initial report resulted, in this case, in “unreasonably prolonging this litigation, imposing unnecessary costs upon plaintiffs and further contributing to the unwarranted delays in resolving this claim”; and (4) “given the discovery failures by defendant's counsel, the unreasonable response by defendant to the allegations, and counsel's

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<sup>72</sup> *Raimey v. Wright Nat. Flood Ins. Co.* Memorandum & Order 14 MC 41, 14 CV 461 (JFB)(SIL)(GRB), <https://img.nyed.uscourts.gov/files/general-ordes/14mc41o637.pdf>.

shocking attempt to curtail inquiry during the hearing, it is reasonable to charge the costs associated with the hearing to defendant's counsel." (November 7 Order, at 24-25, 25-31.)<sup>73</sup>

As a result of this conduct, the court ordered all defendants in "any" Superstorm Sandy case to provide plaintiffs with copies of "*all reports . . . plus any drafts, redlines, markups, reports, notes, measurements, photographs and written communications related thereto—prepared, collected, or taken by any engineer, adjuster, or other agent or contractor affiliated with any defendant, relating to the properties and damage at issue in each and every case, whether such documents are in the possession of defendant or any third party.*"<sup>74</sup>

Thereafter, a similar practice was alleged in two other cases. The complaint in *Dweck v. Hartford Ins. Co. of the Midwest*,<sup>75</sup> alleged, *inter alia*, that defendant *Hartford* hired an engineering firm, HiRise Engineering P.C., to conduct an engineering inspection of the damaged premises to determine the cause of damages. HiRise Engineering P.C. hired an independent engineer, Harold Weinberg, P.E., to conduct the inspection which took place on or about January 11, 2013. Following said inspection, Mr. Weinberg found that the damage to the premises was caused by flood and submitted his findings to HiRise Engineering P.C. HiRise Engineering P.C. then issued a report dated March 18, 2013, bearing Mr. Weinberg's signature and professional seal, stating that *the damage to the premises was pre-existing in nature and due to the consolidation of soil beneath the front stop of Plaintiff's house*.<sup>76</sup> A second HiRise engineer, who was not licensed in New York, changed the report to say the damage was preexisting and caused by soil consolidation and added the first engineer's seal without showing him the report.<sup>77</sup> The first engineer, when confronted with the altered report, disavowed its conclusions

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 26.

<sup>75</sup> *Dweck v. Hartford Ins. Co. of the Midwest*, No.: 1:14-cv-06920-ERK-JMA (E.D.N.Y.) (filed on Dec. 3, 2014).

<sup>76</sup> *Dweck v. Hartford Ins. Co. of the Midwest*, Complaint filed Nov. 25, 2014. <http://www.plainsite.org/dockets/2iud0slz9/new-york-eastern-district-court/dweck-et-al-v-hartford-insurance-company-of-the-midwest/>.

<sup>77</sup> Jay Levin, *Potential Insurance Company Fraud in Superstorm Sandy Litigation* INT'L RISK MANAGEMENT INST. (Dec. 2014) <https://www.irmi.com/articles/expert-commentary/potential-insurance-company-fraud-in-superstorm-sandy-litigation>.

and stuck by his original findings.<sup>78</sup>

In *Shlyonsky v. HiRise Engineering, P.C.*, three firms filed a similar complaint, including one of the firms that filed Dweck.<sup>79</sup> The complaint cited Travelers Insurance Company, d/b/a Standard Fire Insurance Company, as the offending insurer. The Shlyonskys alleged that HiRise also altered the engineering report to conclude there was preexisting damage without the original engineer's knowledge or approval.<sup>80</sup>

Specifically the *Raimey* case has frustrated a community struggling to rebuild after Sandy. New Jersey Senators Robert Menendez and Cory Booker took interest in this case and together wrote to FEMA as the party "ultimately responsible for [the Write Your Own (WYO) insurance companies'] behavior."<sup>81</sup> The senators cited FEMA had an "unbalanced penalty structure" because it punished WYOs for overpaying on claims resulting in harsh practices where policyholder received less payments.<sup>82</sup> The senators described the *Raimey* opinion as the "smoking gun of a pervasive and intentional effort to lowball disaster victims" and cited FEMA's "oversight or tacit encouragement of these procedures" facilitated WYO insurance companies' questionable practices.<sup>83</sup>

Six months later, in early March 2015, an investigation by CBS 60 Minutes entitled *The Storm after the Storm* found evidence that damage reports were altered to reduce the size of insurance payouts.<sup>84</sup> The 60 Minutes team spoke at length with Andrew Braum, an engineer who assessed damages and crafted reports for properties near Long Beach in New York State, one of the regions hit hardest by the storm. Braum says in the case of one homeowner, he wrote in

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<sup>78</sup> *Id.*

<sup>79</sup> *Shlyonsky v. HiRise Engineering, P.C.*, 1:14-cv-07136, U.S. District Court, Eastern District of New York (Brooklyn).

<sup>80</sup> Levin, *supra* note 77.

<sup>81</sup> *After Explosive '60 Minutes' Story: NJ, NY Sens Call for Congressional Oversight Hearings of FEMA-Run Flood Insurance Program Ridden with Evidence of "Widespread Fraud"*, MENENDEZ (Mar. 2, 2015), <http://www.menendez.senate.gov/news-and-events/press/after-explosive-60-minutes-story>.

<sup>82</sup> *NJ, NY Senators Meet with FEMA Chief; Announce Major Action for Sandy Victims*, MENENDEZ (Mar. 11, 2015), <http://www.menendez.senate.gov/news-and-events/press/nj-ny-senators-meet-with-fema-chief-announce-major-action-for-sandy-victims->.

<sup>83</sup> Emily Field, *NJ Senators Press FEMA for Sandy Insurance Probe*, LAW360 (Nov. 17, 2014), <http://www.law360.com/articles/596857/nj-senators-press-fema-for-sandy-insurance-probe>.

<sup>84</sup> Alfonsi, *supra* note 63.

that report that the storm was responsible for damages to the home and that the owners are entitled to their claim.<sup>85</sup> But the final report reads differently, something Braum confirmed to reporters. “In the revised or the altered report, it says, ‘Settlement due to consolidation of soil caused the foundation wall to crack.’ That’s not what I wrote. It’s completely altered.”<sup>86</sup> Braum says that he reviewed his other reports, and confirmed that nearly 175 of his reports, or 96 percent of his documents, were altered.<sup>87</sup> The remaining documents that were left untouched, coincidentally, determined that those homes avoided the worst effects of the storm, and that no immediate repairs were required.<sup>88</sup> Braum worked for a company called HiRise Engineering, which was reportedly hired by several insurance companies that cover homes in New York and New Jersey. The 60 Minutes team confirmed that the New York Attorney General sent agents to HiRise offices at the end of February as part of an investigation into insurance fraud.<sup>89</sup> Braum says he was pressured by HiRise to participate in the cover up by signing off on the altered documents as fact. He refused to comply, and assisted reporters with their investigation into the company. HiRise was hired by multiple insurers that are all overseen by FEMA’s flood insurance program, and there are allegations of criminal wrongdoing extending all the way up to the federal agency.

The next day, on March 2, 2015, “U.S. Senators Bob Menendez and Cory Booker (both D-N.J.), and Kirsten Gillibrand and Charles E. Schumer (both D-N.Y.) called on the Senate Committee on Banking, Housing & Urban Affairs to hold new oversight hearings of the flood insurance claims of homeowners impacted by Superstorm Sandy through the National Flood Insurance Program (NFIP), which is run by the Federal Emergency Management Agency (FEMA).”<sup>90</sup>

According to federal court records and recent news reports,

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<sup>85</sup> Sharyn Alfonsi, *Transcript from The Storm After the Storm*, CBS (June 7, 2015), <http://www.cbsnews.com/news/hurricane-sandy-60-minutes-fraud-investigation-2/>.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *LI Engineering Firm Raided Amid Attorney General Probe Into Sandy Insurance Payouts*, CBS (Feb. 18, 2015), <http://newyork.cbslocal.com/2015/02/18/li-engineering-firm-raided-amid-attorney-general-probe-into-sandy-insurance-payouts/>.

<sup>90</sup> *After Explosive ‘60 Minutes’ Story NJ, NY Sens Call for Congressional Oversight Hearings of FEMA-Run Flood Insurance Program Ridden with Evidence of “Widespread Fraud”*, MENENDEZ (Mar. 2, 2015), <http://www.menendez.senate.gov/news-and-events/press/after-explosive-60-minutes-story>.

including a months-long investigation aired by 60 Minutes, evidence supported homeowners' allegations that private insurance companies denied the flood insurance claims of thousands of homeowners Superstorm Sandy because of fraudulently altered engineering reports. The Senators expressed serious concerns about when FEMA learned of the potential fraud, what steps FEMA took to address it, and FEMA's general oversight of those that run the NFIP program on its behalf. One of the interviews contained in the 60 Minutes segment was an interview with Brad J. Kieserman, former Deputy Associate Administrator for Insurance at FEMA, during which he said FEMA was aware of potential fraud involving a denied insurance claim in "late 2013" – yet no investigation was initiated to the Senators' knowledge.<sup>91</sup> In a July 2014 hearing, chaired by Senate Menendez in the Senate Banking Committee, Administrator Fugate pledged to refer concerning evidence of potential fraud to the Inspector General of the Department of Homeland Security (DHS IG) and request that the IG launch an investigation, yet according to news reports, that investigation did not begin until months later in December.<sup>92</sup>

Further, evidence has been presented in federal court that is cause for concern over the current lack of FEMA oversight over the "Write-Your-Own" insurance companies who service NFIP claims, and the subcontractors who they hire to assist them. For example, the founder of U.S. Forensics LLC, one of the engineering firms alleged to have materially altered engineering reports, testified in court that his company was not licensed to practice in the State of New York at the time that U.S. Forensics was writing engineering reports for homes following Superstorm Sandy.<sup>93</sup> Additionally, news reports show that an executive of U.S. Forensics was named in multiple civil lawsuits for altering engineering reports following Hurricane Katrina.<sup>94</sup>

The culmination of court records and extensive news reports, including a devastating months-long investigation by 60 Minutes, brought to light that private insurance companies appeared to have denied flood insurance claims of countless homeowners affected by Superstorm Sandy based on fraudulently altered engineering reports.

Senator Gillibrand, with Senators Charles E. Schumer (D-

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

NY), Robert Menendez (D-NJ), and Cory Booker (D-NJ), demanded an oversight hearing to examine how FEMA handled the claims process and how FEMA managed the private insurance companies that facilitate the NFIP on its behalf.<sup>95</sup> “Your government failed you.” These were the words spoken by Senator Bob Menendez during his opening comments of the Sandy Task Force meeting in Washington, DC on April 28, 2015.<sup>96</sup> The purpose of the task force, according to Menendez, will be to bring justice to Sandy survivors and to fix the claims process for future claimants.<sup>97</sup> The task force includes New Jersey Senators Bob Menendez and Corey Booker, New York Senators Chuck Schumer and Kirsten Gillibrand, FEMA Administrator Craig Fugate, FEMA Deputy Administrator Brad Keiserman, and various non-profit groups working with Superstorm Sandy victims.<sup>98</sup> The non-profit groups include Touro Law School, Ocean County N.J. Long-term Recovery Group, Stop FEMA Now and Breezy Point N.Y. Cooperative.

Following the Sandy Task Force meeting, in May 2015, nearly two-and-a-half years post-Sandy, FEMA agreed to reopen approximately 142,000 claims for flood insurance after numerous allegations of fraud, with engineering companies or flood insurance carriers deliberately altering damage adjustments which resulted in underpayments and denials for thousands of homeowners.<sup>99</sup>

On May 29, 2015, FEMA’s National Flood Insurance Program (NFIP) officially announced the start of the Superstorm Sandy flood insurance claims review.<sup>100</sup> In a formal statement FEMA

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<sup>95</sup> *After Superstorm Sandy Victims Faced Burdensome & Fraudulent Insurance Claims Process, Senator Gillibrand & Congresswoman Rice Push For New Legislation To Protect Homeowners In The Future Storms; Renews Push for FEMA To Move Faster On Claims*, U.S. HOUSE OF REPRESENTATIVES (Nov. 30, 2015), <https://kathleenrice.house.gov/news/documentsingle.aspx?DocumentID=252>.

<sup>96</sup> Senator Menendez NJ, *Sandy Task Force*, YOUTUBE (Apr. 28, 2015), [https://www.youtube.com/watch?v=P\\_q4D7tl3ao](https://www.youtube.com/watch?v=P_q4D7tl3ao).

<sup>97</sup> Robert Trautmann, *Senators Launch Sandy Task Force in Washington, DC*, PROPERTY INSURANCE COVERAGE LAW BLOG (Apr. 30, 2015), <http://www.propertyinsurancecoveragelaw.com/2015/04/articles/hurricane-sandy-1/senators-launch-sandy-task-force-in-washington-dc/>.

<sup>98</sup> *Id.*

<sup>99</sup> Melissa Luckman, *Clinical Programs: Superstorm Sandy: A Storm That Changed New York Forever*, TOURO LAW CENTER (Oct. 29, 2015), <https://tourolawclinics.wordpress.com/2015/10/29/superstorm-sandy-a-storm-that-changed-new-york-forever/>.

<sup>100</sup> Press Release, FEMA, FEMA Announces Launch of Hurricane Sandy Flood Insurance Claims Review Process (May 29, 2015), <http://www.fema.gov/news-release/2015/05/29/fema-announces-launch-hurricane-sandy-flood-insurance-claims-review->



claimed “the review is part of a broad process to reform NFIP claims and appeals procedures.”<sup>101</sup> In May 2015, FEMA’s National Flood Insurance Program made some major procedural changes after facing backlash from dissatisfied policyholders involving claims and appeals from Hurricane Sandy.<sup>102</sup> Accusations of underpayment of Hurricane Sandy claims and the ineffective claims process used, persuaded the Federal Emergency Management Agency to react.<sup>103</sup> Thus, the Hurricane Sandy National Flood Insurance Program Claims Review process was launched and policyholders who qualified for review were informed via mail.<sup>104</sup> Roughly 142,000 policyholders who suffered damages from Hurricane Sandy between October 27, 2012 and November 6, 2012 were among those contacted for review of their files.<sup>105</sup> Excluded from the review process were National Flood Insurance Program policyholders whom had already received the maximum funds as permitted under their policies, as well as those who sought relief of the matter through litigation.<sup>106</sup>

While FEMA promised this review process would be ‘survivor centric,’ and run in a smooth, quick and efficient manner, the process quickly became embroiled in bureaucratic red tape. FEMA initially sought to mail approximately 142,000 letters in batches predetermined by zip code to advise those eligible policyholders of the review process, and only once that letter was received, could a policyholder contact the Federal Emergency Management Agency within ninety days.<sup>107</sup> At this time, the policyholder will provide his or her name and the address of the insured property followed by a series of questions to determine eligibility for review to determine if the policyholder is entitled to additional payment.<sup>108</sup> Eligible policyholders seeking review of their Superstorm Sandy claims are required to submit a National Flood Insurance Program “Request for Review of

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process.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *How the Claims Review Process Works*, FEMA (Sept. 17, 2015), [http://www.fema.gov/media-library-data/1442504317061-81a16bc7def29b9d3497a02d07204441/FS\\_How\\_the\\_Sandy\\_Claims\\_Review\\_Process\\_Works\\_091715.pdf](http://www.fema.gov/media-library-data/1442504317061-81a16bc7def29b9d3497a02d07204441/FS_How_the_Sandy_Claims_Review_Process_Works_091715.pdf) [hereinafter FEMA, *How the Claims Review Process Works*].

<sup>106</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>107</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>108</sup> *Hurricane Sandy Flood Insurance Claims Review Toolkit*, FEMA, <https://www.fema.gov/media-library/assets/documents/105899> (last updated Dec. 29, 2015).

Hurricane Sandy File” application to participate.<sup>109</sup> The Federal Emergency Management Agency initially set the deadline for submission of this request for September 15, 2015.<sup>110</sup>

After the Federal Emergency Management Agency has received a completed form requesting review of the policyholder’s claim, the Agency will then contact the policyholder’s insurance company to request the claim file.<sup>111</sup> Within two business days, the claim file is then passed on to the National Flood Insurance Program review office where it is allocated to an adjuster certified by the National Flood Insurance Program.<sup>112</sup> An engineer is to review engineering reports included in claims submitted for review.<sup>113</sup> Once an adjuster is assigned to a claim file, the adjuster will reach out to the policyholder and work with him or her in the course of reviewing the claim.<sup>114</sup> The adjuster will inquire whether the policyholder wishes to submit any additional documentation or information to be consid-

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<sup>109</sup> *National Flood Insurance Program Request for Review of Hurricane Sandy Claims File: Fillable Application*, FEMA (May 17, 2015), <http://www.fema.gov/media-library-data/1432052537460-1d125f16e4774d49fc29b5ea844221d3/6FIPRequestforReviewofHurricaneSandyFileFillable508.pdf> [hereinafter *FEMA, Request for Review Application*].

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>113</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105. The Federal Emergency Management Agency provided a Fact Sheet for the National Flood Insurance Program titled “How the Hurricane Sandy Claims Review Process Works.” Here, FEMA states that “[c]laims with engineering reports will be reviewed by an engineer not associated with firms currently under investigation.” FEMA, *How the Claims Review Process Works*, *supra* note 105. Additionally,

[a]ccording to federal court records and recent media reports, including a months-long investigation aired by 60 Minutes, there is evidence that private engineering companies, U.S. Forensic, LLC and HiRise Engineering, P.C., altered engineering reports so as to not fully reflect the true impact and damage caused by Superstorm Sandy to New Yorkers’ homes, which led to the unjust denial or underpayment of flood insurance claims.

Press Release, Charles E. Schumer United States Senator For New York, Schumer, Gillibrand: FEMA must ensure that pending Sandy flood insurance settlement applies to all affected policy holders, even if they didn’t file a lawsuit- also urge that New Yorkers with Sandy damage have access to engineering & insurance documents to determine if fraud has occurred (Mar. 4, 2015), [http://www.schumer.senate.gov/newsroom/press-releases/schumer-gillibrand-fema-must-ensure-that-pending-sandy-flood-insurance-settlement-applies-to-all-affected-policy-holders-even-if-they-didnt-file-lawsuit\\_also-urge-that-new-yorkers-with-sandy-damage-have-access-to-engineering-and-insurance-documents-to-determine-if-fraud-has-occurred](http://www.schumer.senate.gov/newsroom/press-releases/schumer-gillibrand-fema-must-ensure-that-pending-sandy-flood-insurance-settlement-applies-to-all-affected-policy-holders-even-if-they-didnt-file-lawsuit_also-urge-that-new-yorkers-with-sandy-damage-have-access-to-engineering-and-insurance-documents-to-determine-if-fraud-has-occurred).

<sup>114</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

ered in reviewing the claim.<sup>115</sup> If a policyholder declines, the review process moves forward with the documentation and information included in the current claim file. Alternatively, a policyholder is given fourteen days to submit any additional documentation and/or information he or she intends to have the adjuster consider as part of the review. The adjuster will attempt to contact a policyholder who has previously informed the adjuster of his or her intent to submit additional information but failed to do so within the fourteen-day deadline. In addition, the Federal Emergency Management Agency will suspend the review process if the Agency cannot make successful contact with the policyholder for the duration of thirty days.<sup>116</sup> Following the submission of any additional documentation or information from the policyholder, the adjuster will carefully review the claim taking into consideration the existing claim file and any additional submissions to the file.<sup>117</sup> Once the adjuster has completed the review of the claim file, the adjuster will make a recommendation on the claim to the Federal Emergency Management Agency.<sup>118</sup>

Policyholders may again disagree with the determinations made regarding their claims upon the recommendation of adjusters.<sup>119</sup> When such a disagreement over the recommendation occurs, an additional review process may be utilized to assist the Federal Emergency Management Agency in making its determination on the claim being reviewed.<sup>120</sup> The additional review of the contesting policyholder's claim file is performed by an "expert third party neutral," such as an independent attorney with extensive knowledge in insurance or a former judge.<sup>121</sup> A policyholder who has chosen to undergo this additional review process will engage in communication with the neutral party regarding any questions the neutral party may have while reviewing the claim.<sup>122</sup> The neutral party will also contact the adjuster with questions throughout the review process.<sup>123</sup> It is in the neutral party's discretion to call upon the policyholder and the adjuster for a

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<sup>115</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>116</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>117</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>118</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>119</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>120</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>121</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>122</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>123</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

hearing when the neutral deems it is appropriate.<sup>124</sup> Once the neutral party has completed the review of the claim file, he or she will issue a recommendation on the claim to the Federal Emergency Management Agency.<sup>125</sup> The recommendation issued by the neutral party has considerable influence on the FEMA's final decision on the claim.<sup>126</sup>

Thus, to a contesting policyholder's delight, FEMA may determine that the policyholder is entitled to additional payment based on the review of the claim. When this determination is made, the policyholder's insurance carrier will receive an order from FEMA instructing the insurance carrier to make the appropriate payments to the policyholder to which the funds are owed.<sup>127</sup> A letter will also be sent to the policyholder informing him or her of FEMA's decision on the claim.<sup>128</sup> When it is determined that a policyholder is entitled to additional payment, the policyholder is then required to submit a signed Proof of Loss swearing to the requested sum of money backed by supporting documentation.<sup>129</sup> Cases submitted to the Superstorm Sandy National Flood Insurance Program Claims Review are deemed closed when the claim review decision has been conveyed to all parties to the claim.<sup>130</sup>

Within days of the review process opening, it became apparent that there were multiple administrative errors and failures with the review process that quickly became evident. The first issue was the method in which FEMA was contacting eligible policyholders. FEMA insisted that letters be mailed to homeowners, without considering that most policyholders were still displaced and would never receive that notification. Further, the time of initial intake until there was contact made by a FEMA review adjuster took in excess of three months, along with the receipt of claim files that were to be requested directly from the FEMA backed NFIP flood insurance company. Months passed without any contact from an adjuster nor completed reviews of these claims, which were promised to be delivered within a 90-day period. Furthermore, on the eve of the night prior to the September 17, 2015 deadline, FEMA extended the deadline for flood

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<sup>124</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>125</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>126</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>127</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>128</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>129</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

<sup>130</sup> FEMA, *How the Claims Review Process Works*, *supra* note 105.

insurance policyholders to submit their Superstorm Sandy Claims for review until October 15, 2015.<sup>131</sup>

Concurrently, The U.S. Department of Housing and Urban Development (HUD) announced that any additional flood insurance proceeds up to \$20,000 would not be treated as duplicative.<sup>132</sup> Federal agencies cannot provide disaster assistance for losses covered by insurance.<sup>133</sup> HUD's announcement stated, "This will eliminate the need for HUD grantees to reclaim assistance from these households or to repay those funds through non-federal sources. To date, three out of four National Flood Insurance Program (NFIP) claimants have received less than \$20,000 in additional compensation from FEMA and will not face any possible repayment."<sup>134</sup> Families who received/will receive more than \$20,000 in additional flood insurance payments will still have the opportunity to demonstrate the added claim payments address legitimate unmet needs and therefore are not duplicative.<sup>135</sup> "These families have suffered enough and shouldn't be further victimized through no fault of their own," said Tregoning. "We have a larger responsibility to facilitate recovery, not to hinder it just because these families didn't receive sufficient flood insurance payments."<sup>136</sup> HUD determined that below \$20,000, any benefit gained by going through a protracted process of reexamining and documenting costs incurred by homeowners would not outweigh the larger financial and human costs associated with doing so.<sup>137</sup> For those NFIP policyholders who receive more than \$20,000 in additional claim payments, HUD will require its grantees (primarily New York State, New York City, and the State of New Jersey) to determine whether any amount over \$20,000 duplicates federal assistance already provided.<sup>138</sup>

As time passes for Sandy survivors, FEMA continues to re-

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<sup>131</sup> Press Release, FEMA, FEMA Extends Deadline to Request Hurricane Sandy Claims Review Release (Sept. 16, 2015) <http://www.fema.gov/news-release/2015/09/16/fema-extends-deadline-request-hurricane-sandy-claims-review>.

<sup>132</sup> Press Release, U.S. Dep't of Housing and Urban Development, HUD Announces Relief for Victims of Hurricane Sandy (Sept. 16, 2015) [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2015/HUDNo\\_15-114](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2015/HUDNo_15-114).

<sup>133</sup> HUD Press Release, *supra* note 132.

<sup>134</sup> HUD Press Release, *supra* note 132.

<sup>135</sup> HUD Press Release, *supra* note 132.

<sup>136</sup> HUD Press Release, *supra* note 132.

<sup>137</sup> HUD Press Release, *supra* note 132.

<sup>138</sup> HUD Press Release, *supra* note 132.

view Sandy claims at an alarmingly slow pace. When it launched the initiative in May, the NFIP said the process would be streamlined, allowing homeowners to have claims examined within three months. Five months later, more than half the 17,000 storm victims who requested reviews have waited longer than that, with the process extending into four or even five months for upward of 5,500 victims of the 2012 storm.<sup>139</sup> As of October 22, 2015 8,733 cases had been in review for more than 90 days and 5,576 had been in review for more than 120 days, according to FEMA.<sup>140</sup>

According to FEMA's most recently released Fact Sheet dated March 18, 2016, of the 1,695 eligible cases that were in litigation, 1,497 cases have been settled, with checks issued totaling \$147,381,202 as of March 17, 2016.<sup>141</sup> The Touro Disaster Relief Clinic filed eight cases in litigation, all of which have settled, netting in excess of \$660,000 for our clients. Furthermore, as of March 17, 2016, there are 19,034 eligible claims within the Sandy Claims Review, and 4,141 claims have been closed with claims paid totaling in \$31,106,424 to 2,081 policyholders.<sup>142</sup> To date, the Clinic has taken on over sixty (60) cases for legal representation throughout the review process, and continues to receive intakes for FEMA review cases on a daily basis. In fact, we have become a direct referral source for FEMA, for those homeowners in the review process representing themselves, who feel they need additional assistance. It has become quite clear that FEMA should not be able to operate under their own regime, and needs to be held accountable to all Sandy survivors and well as future flooding victims who believe the FEMA's NFIP will properly pay for their flood related losses.

On November 19, 2015, Senator Kirsten Gillibrand intro-

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<sup>139</sup> Joe Ryan, *Flood Insurance Review Plagued With Delays*, NEWSDAY (Oct. 30, 2015), <http://www.newsday.com/business/hurricane-sandy-flood-insurance-review-plagued-with-delays-despite-pledge-of-speed-1.11023061#comments>.

<sup>140</sup> Press Release, Sen. Chuck Schumer, Schumer, Gillibrand Reveal: Sandy Victims who Entered FEMA Flood Insurance-Review Process Months Ago are Still Waiting for Claims to be Processed (Oct. 30 2015) <https://www.schumer.senate.gov/newsroom/press-releases/schumer-gillibrand-reveal-sandy-victims-who-entered-fema-flood-insurance-review-process-months-ago-are-still-waiting-for-claims-to-be-processed-fema-foot-drag-means-less-than-5-percent-of-the-17000-submitted-sandy-claims-have-been-re-reviewed-senators-demand-swift-review-of-every-case>.

<sup>141</sup> *NFIP Transformation Task Force Update Fact Sheet*, FEMA (March 2016), [http://www.fema.gov/media-library-data/1458332015100-0c64cf2ea8839bee8b80628c1946f4a6/FS\\_NFIP\\_Transformation\\_Task\\_Force031816\\_508\\_compliant.pdf](http://www.fema.gov/media-library-data/1458332015100-0c64cf2ea8839bee8b80628c1946f4a6/FS_NFIP_Transformation_Task_Force031816_508_compliant.pdf).

<sup>142</sup> *Id.*

duced the Flood Insurance Transparency and Accountability Act of 2015.<sup>143</sup> Superstorm Sandy victims faced an extensive, burdensome, and fraud-ridden flood insurance claims process. In response to those complaints, this legislation requires more transparency and accountability from FEMA, so that home and property owners who carry flood insurance policies are better protected in the event of another storm.<sup>144</sup> At a press conference on November 30, 2015, our local representatives pushed for this legislation to be passed.<sup>145</sup> “Over three years after Superstorm Sandy tore through New York, communities are still rebuilding and families are still fighting to put their lives back together,” said Senator Gillibrand.<sup>146</sup> Senator Gillibrand continued,

It is unacceptable that some New Yorkers were forced to face a burdensome and fraud-ridden flood insurance claims process. We need to reform the system and require more transparency to hold FEMA accountable so that homeowners are protected when the next storm hits. This new bipartisan legislation would create unprecedented oversight over FEMA and hold them accountable so that New Yorkers never again have to face the endless red tape and fraud-ridden claims process they have been forced to endure over the last three years since SuperStorm [sic] Sandy.<sup>147</sup>

“For too many Sandy victims on Long Island, the last three years

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<sup>143</sup> Flood Insurance Transparency and Accountability Act of 2015, S. 2324, 114th Cong. (2015).

<sup>144</sup> *Id.*

<sup>145</sup> Press Release, Sen. Kristen Gillibrand, After Superstorm Sandy Victims Faced Burdensome & Fraudulent Insurance Claims Process, Senator Gillibrand & Congresswoman Rice Push for New Legislation to Protect Homeowners in Future Storms; Renews Push for FEMA to Move Faster on Claims (Nov. 30, 2015), <http://www.gillibrand.senate.gov/newsroom/press/release/after-superstorm-sandy-victims-faced-burdensome-and-fraudulent-insurance-claims-process-senator-gillibrand-congresswoman-rice-push-for-new-legislation-to-protect-homeowners-in-future-storms-renews-push-for-fema-to-move-faster-on-claims> [hereinafter Sen. Gillibrand Press Release] (“Gillibrand and Rice’s Bipartisan Legislation Would Increase Transparency & Accountability to Improve How FEMA Handles Insurance Claims Three Years Since Superstorm Sandy, More than 17,000 Claims STILL Under Review Following Evidence of Thousands of Denied or Underpaid Homeowner Claims.”).

<sup>146</sup> Sen. Gillibrand Press Release, *supra* note 145.

<sup>147</sup> Sen. Gillibrand Press Release, *supra* note 145.

have been a bureaucratic nightmare,” said Representative Kathleen Rice.<sup>148</sup> Representative Rice continued,

Legitimate claims were denied or underpaid because of fraudulent engineering reports, and homeowners who paid for flood insurance were left feeling cheated by a program that they trusted to be there when they needed it most. We have to do whatever it takes to restore that trust, and this bipartisan legislation is a critical first step that will reform the National Flood Insurance Program to make it more transparent, more accountable, and more focused on victims’ needs. Passing this bill will help ensure that victims get the support and funding they need to fully recover from natural disasters, and I’ll keep working with Senator Gillibrand and our fellow cosponsors to get it to the President’s desk.<sup>149</sup>

Senator Gillibrand’s Flood Insurance Transparency and Accountability Act of 2015 is a crucial step forward for all those homeowners who were defrauded following Superstorm Sandy, as well as future homeowners who are potential victims of another flooding event. Homeowners faithfully paid yearly flood insurance premiums and trusted that they would be paid correctly following a flood, yet inexcusably, three years later, remain fighting for what is rightfully theirs. Our homeowners deserve the transparency from FEMA that Gillibrand’s legislation calls for. The NFIP reformation created by this legislation is a vital step in restoring Sandy Survivor’s faith in FEMA, as well as policies backed by FEMA. This legislation provides hope to so many who felt their voices were not heard.

The Flood Insurance Transparency and Accountability Act of 2015 requires more clarity, so that property owners have access to the documents related to their insurance claims case, including draft reports. It would also demand accountability from FEMA in its oversight of the NFIP and the contractors hired to run it. The bipartisan legislation is also co-sponsored by Senator Charles Schumer in the Senate and Representative Dan Donovan (NY-11) in the House of

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<sup>148</sup> Sen. Gillibrand Press Release, *supra* note 145.

<sup>149</sup> Sen. Gillibrand Press Release, *supra* note 145.



Representatives.<sup>150</sup> Specifically, the legislation does the following: (1) Make documents related to the basis for deciding flood insurance claims transparent for homeowners; (2) Create a direct point of contact at FEMA for homeowners who have filed appeals with FEMA for claims that have been initially denied; (3) Require FEMA to conduct yearly reviews of the “Write Your Own” insurance companies and other private entities working with flood insurance claims; (4) Require FEMA to publish claims data online; (5) Remove the “earth movement” exclusion, which states that flood insurance policies do not cover damage and loss to property caused by “earth movement,” even if the earth movement was caused by flood. This exclusion has been used as a basis to deny claims filed by many Sandy claimants; (6) Reform the claim appeals process; (7) Changes the statute of limitations on all flood insurance claims to run for two years from the date of loss; and (8) Require FEMA and Homeland Security to report to Congress.<sup>151</sup>

More than three years after Superstorm Sandy, there are pending lawsuits and an excess of 16,000 claims in the review process.<sup>152</sup> Thousands of loyal flood insurance premium paying homeowners remain displaced, and they are now living in unhealthy environments with extreme financial debt because of the fraud and underpayments from their flood insurance companies.

## V. INTERPLAY OF LEGAL AND NON-LEGAL NON-PROFIT AGENCIES ROLES IN THE RECOVERY PROCESS

Possibly the most crucial and successful component of the Sandy recovery has been the interplay of the legal and non-legal agencies. The partnership between the non-profit legal services and

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<sup>150</sup> Coleman Lamb, *After Superstorm Sandy Victims Faced Burdensome & Fraudulent Insurance Claims Process, Senator Gillibrand & Congresswoman Rice Push for New Legislation to Protect Homeowners in Future Storms; Renews Push for FEMA to Move Faster on Claims*, U.S. HOUSE OF REPRESENTATIVES (Nov. 30, 2015), <https://kathleenrice.house.gov/news/documentsingle.aspx?DocumentID=252>.

<sup>151</sup> *Id.*

<sup>152</sup> Press Release, Sen. Gillibrand, *After Superstorm Sandy Victims Faced Burdensome & Fraudulent Insurance Claims Process, Senator Gillibrand Announces New Reforms To Protect Homeowners In Future Storms; Renews Push For FEMA To Move Faster On Claims* (Oct. 25, 2015) <http://www.gillibrand.senate.gov/newsroom/press/release/after-superstorm-sandy-victims-faced-burdensome-and-fraudulent-insurance-claims-process-senator-gillibrand-announces-new-reforms-to-protect-homeowners-in-future-storms-renews-push-for-fema-to-move-faster-on-claims>.

other non-profit agencies that are active in the relief work has proven to be effective in coordinating a comprehensive and integrated recovery for those seeking assistance. Issues and concerns facing survivors have evolved drastically over the last three years; organizations have had to respond to these changing needs by modifying and innovating around previous policies. Partnerships like the Long Island Long Term Recovery Group, comprised of non-profit, community and governmental agencies, and the Long Island Voluntary Organizations Active in Disaster (LIVOAD), convened through the Health and Welfare Council of Long Island (HWCLI), which helps all non-profit agencies to respond and proposes solutions to these trends to serve the survivors.<sup>153</sup> The center of these coordinated groups has been the Disaster Case Management Program (DCMP), which is staffed with individual Disaster Case Managers (DCMs) who provide assistance to address unmet needs. DCMP is a federally funded program administered by FEMA.<sup>154</sup> In the event of a presidentially declared disaster, the Governor of the impacted State may request the implementation of the DCMP if the declaration includes Individual Assistance.<sup>155</sup>

The DCMP in New York is operated by Catholic Charities Community Services, Archdiocese of New York.<sup>156</sup> DCM works with a disaster survivor to implement recovery plans for disaster related needs on a limited time basis.<sup>157</sup> These recovery plans are achieved through monetary, volunteer, goods assistance, advocacy and social services.<sup>158</sup> Non-profit legal services add to the holistic approach with resources to refer clients with serious legal issues. These organizations also provide input and guidance to DCMs for clients' issues, which can often be resolved without attorney interven-

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<sup>153</sup> *Disaster Recovery*, HEALTH AND WELFARE COUNCIL OF LONG ISLAND, <http://www.hwcli.com/focus-areas/disaster-recovery/> (last visited Mar. 30, 2016).

<sup>154</sup> *Disaster Case Management*, FEMA (Mar. 2015), [http://www.fema.gov/media-library-data/1441991447279-2f7d4a5d00fba4d2ecfc1cd840aa249a/DCM\\_factSheet.pdf](http://www.fema.gov/media-library-data/1441991447279-2f7d4a5d00fba4d2ecfc1cd840aa249a/DCM_factSheet.pdf).

<sup>155</sup> *Id.*

<sup>156</sup> *Office of Human Services Emergency Preparedness & Response: Disaster Case Management*, U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, <http://www.acf.hhs.gov/programs/ohsepr/disaster-case-management> (last visited Mar. 30, 2016).

<sup>157</sup> *Id.*

<sup>158</sup> *See generally Disaster Case Management: Program Guidance*, FEMA 6 (Mar. 2013), [https://www.fema.gov/media-library-data/20130726-1908-25045-2403/dcm\\_pg\\_final\\_3\\_8\\_13.pdf](https://www.fema.gov/media-library-data/20130726-1908-25045-2403/dcm_pg_final_3_8_13.pdf).

tion.<sup>159</sup> To further coordination and education among the non-profit community, non-profit legal services, including the Touro Law Center's Disaster Relief Clinic, have presented on the topics of insurance claims, NY Rising, and contractor disputes, at staff meetings for these programs to update and properly inform the non-legal agencies on the changing legal landscape of disaster relief. Unprecedented Sandy specific topics and processes have also been guided by the non-profit legal services including the Proof of Loss extensions and the Superstorm Sandy Claims Review Process.<sup>160</sup>

As of September 30, 2015, the American Red Cross committed \$313.0 Million to Sandy recovery, with 35% allocated to Individual Casework and Assistance.<sup>161</sup> Apart from the FEMA funded DCMP, other DCMs were provided from agencies like the Red Cross. The need for this long term assistance is evident in the percentage of funds spent for individual casework and assistance beyond the FEMA funded DCMP. Although there are many programs for Sandy recovery, the DCMP has been given an extension beyond the 24-month period based on FEMA guidance.<sup>162</sup> As of April 14, 2015, there were still approximately 3,000 open cases with the DCMP as funds were set to run out at the end of the month and before Senator Schumer announced additional \$2.1 million in funds for the program to be funded through October 2015.<sup>163</sup> With the process of recovery and rebuilding taking much longer than anticipated, the current NYS DCMP is scheduled to come to a close at the end of Summer 2016.<sup>164</sup>

Many of these open cases are stuck in the process of obtaining financial assistance from the local and state administered Community Development Block Grant-Disaster Recovery (CDBG-DR) program overseen and funded by the U.S. Department of Housing and Urban

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<sup>159</sup> *Id.*

<sup>160</sup> *The Hurricane Sandy Flood Insurance Claims Review Toolkit*, FEMA, <https://www.fema.gov/media-library/assets/documents/105899> (last updated Dec. 29, 2015).

<sup>161</sup> *Where your money goes: Sandy Response*, AMERICAN RED CROSS, <http://www.redcross.org/support/donating-fundraising/where-your-money-goes/sandy-response> (last visited Mar. 30, 2016).

<sup>162</sup> HEALTH AND WELFARE COUNCIL OF LONG ISLAND, *supra* note 153, at 2.

<sup>163</sup> *News: Schumer Announces \$2.1 Million In Federal Funds For Catholic Charities' Disaster Case Management Program*, CATHOLIC CHARITIES ARCHDIOCESE OF NEW YORK (Apr. 14, 2015), <http://catholiccharitiesny.org/news/schumer-announces-21-million-federal-funds-catholic-charities%E2%80%99-disaster-case-management-program>.

<sup>164</sup> *FAQ'S*, NEW YORK STATE DISASTER CASE MANAGEMENT PROGRAM, <http://www.sandydcm.org/faqs/> (last visited Mar. 30, 2016).

Development.<sup>165</sup> The extensive paperwork, duplication of benefits issues and bureaucratic red tape is slowing or halting many homeowners from complying with local ordinances and completing repairs. The non-profit legal and non-legal agencies are continually attempting to work with the program and homeowners' on identifying issues and addressing concerns that have arisen.

Furthermore, a case manager is needed to present to the Unmet Needs Roundtable,<sup>166</sup> a group comprised of donors, as a last resort recovery resource providing financial assistance directly to vendors of services.<sup>167</sup> The goal of the Unmet Needs Roundtables' assistance is to allow a survivor to return to self-sufficiency and sustainability. Presenting to the Unmet Needs Roundtable is very client specific and has required in some cases legal counsel to explain and advocate for complicated cases. "By the time the roundtable closes, we will have distributed \$10 million in grants to assist Sandy Survivors in meeting recovery."<sup>168</sup> With the interplay of non-profit legal and non-legal services, clients have the opportunity to obtain the assistance they may need. These legal issues can range from foreclosure, living wills, trusts, insurance litigation, landlord and contractor issues as well as others. Without this non-profit legal assistance to provide clarity on clients' circumstances, assistance may be denied.

For the Touro Disaster Relief Clinic's partnership with the DCMP, initially through FECS<sup>169</sup> which transitioned to Catholic Charities Community Services Arch Diocese of New York,<sup>170</sup> having a DCM seated within the Clinic has proven to be successful in providing comprehensive services to clients who initially come for legal assistance, but they were found to need more integrated services to recover. For example, in one instance, a client called the Clinic hotline for an intake looking for insurance claim assistance. After a complete intake, it was discovered that the client was in foreclosure,

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<sup>165</sup> *Community Development Block Grant Disaster Recovery Program*, HUD EXCHANGE, <https://www.hudexchange.info/programs/cdbg-dr/> (last visited Mar. 30, 2016).

<sup>166</sup> *NYC Sandy Unmet Needs Roundtable*, NEW YORK DISASTER INTERFAITH SERVICES, <http://www.unmetneedsroundtable.org/> (last visited Mar. 30, 2016).

<sup>167</sup> *Id.*

<sup>168</sup> *Meeting Community Needs*, HEALTH AND WELFARE COUNCIL OF LONG ISLAND, <http://www.hwcli.com/work-we-do/meeting-community-needs/> (last visited Mar. 30, 2016).

<sup>169</sup> *Information about FECS Transition*, FECS, <http://www.fecs.org/> (last visited Feb. 1, 2016).

<sup>170</sup> CATHOLIC CHARITIES ARCHDIOCESE OF NEW YORK, <http://catholiccharitiesny.org/> (last visited Mar. 30, 2016).

experiencing contractor fraud, having trouble navigating the CDBG-DR program, and was struggling financially which caused her to fall behind on utility bills. These issues were the end result of storm damage, loss of employment, and the loss of two family members shortly after with Sandy. The DCM was able to make a home visit to the client to obtain documentation and make a recovery plan. Obtaining counseling services, utility assistance and a construction manager to speak with the contractor through the DCM enabled the client to focus and stay hopeful for recovery. These steps enabled the client to be more self-sufficient and enabled the Clinic to be more efficient in handling the client's foreclosure and other Sandy legal needs.

As many disaster relief programs come to a close, the importance and need of maintaining partnerships and awareness between non-profit legal and non-legal services is evident now more than ever. Sandy is the second costliest hurricane in U.S. History with damages totaling \$50 billion.<sup>171</sup> Much of this cost is attributed to the New York and New Jersey coastlines that are still facing struggles of rebuilding. There are many reasons that homeowners may be struggling with their recovery. However, accusations of fraudulent engineering reports,<sup>172</sup> rampant underpayment of insurance claims,<sup>173</sup> and the bureaucratic red tape that cripples the government assistance programs<sup>174</sup> are some of the reasons that are beyond the survivors' control. There are still many more survivors' in the recovery process with issues they may not even know are a head of them yet. Non-profit legal and non-legal services are an important part to this recovery, and collaboration between the two provide an opportunity for clients to receive resources and assistance that can otherwise be overlooked.

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<sup>171</sup> Casey Leins, *The Deadliest and Costliest Hurricanes in U.S. History*, U.S. NEWS & WORLD REPORT (Jun. 18, 2014, 3:07 PM) <http://www.usnews.com/news/blogs/daminate/2014/06/18/deadliest-costliest-hurricanes-in-us-history>.

<sup>172</sup> *FEMA: Evidence of Fraud in Hurricane Sandy Reports*, CBS NEWS (Feb. 27, 2015), <http://www.cbsnews.com/news/fema-evidence-of-fraud-in-hurricane-sandy-reports/>.

<sup>173</sup> Joe Ryan, *More than half of Sandy victims in FEMA review underpaid on insurance*, NEWSDAY (last updated Sept. 4, 2015, 9:24 PM), <http://www.newsday.com/business/more-than-half-of-sandy-victims-in-fema-review-underpaid-on-insurance-1.10808650>.

<sup>174</sup> David W. Chen, *Hurricane Sandy's Red Tape Makes a Veteran Say, 'I'd Rather Go Back to Falluja'*, N.Y. TIMES (Aug. 18, 2015), [http://www.nytimes.com/2015/08/19/nyregion/victims-of-hurricane-sandy-desperate-to-move-on-weigh-reopening-claims.html?\\_r=0](http://www.nytimes.com/2015/08/19/nyregion/victims-of-hurricane-sandy-desperate-to-move-on-weigh-reopening-claims.html?_r=0).

## VI. CONCLUSIONS

Superstorm Sandy was an unprecedented storm that many people have never seen before and may never see again. Sandy destroyed homes and businesses, and it took lives while in the process. Although Superstorm Sandy was considered to be a ‘once in a life-time storm’, it single-handedly changed thousands of lives, including future generations, and the landscape of the United States. For those unaffected by Sandy, the physical damage has been forgotten and the daily struggles of a Sandy survivor are unknown. The broken system of disaster recovery has resulted in victims selling their homes back to the State, losing their homes to foreclosure or short sale, leaving their ‘nest egg’ or draining every bank and retirement account with the hopes of rebuilding what is now a distant memory. Without reform of the Stafford Act, the FEMA Individuals and Households grant program, and FEMA’s NFIP program, we are all at risk. In response to the mass destruction seen in Sandy’s aftermath, New York City’s Mayor Michael Bloomberg stated “clearly the challenges our city faces in the coming days are enormous.”<sup>175</sup> Three years have passed, and those challenges continue to grow with every passing day.

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<sup>175</sup> *Mayor Bloomberg Updates New Yorkers on City Response to Hurricane Sandy*, NYC.GOV (Oct. 30, 2012), <http://www.nyc.gov/html/om/html/2012b/pr382-12-static.html>.